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January 11, 1939

Mr. Robert F. Peden, Jr.  
County Attorney  
Matagorda County  
Bay City, Texas

Dear Sir:

Opinion No. 0-47  
Re: County Hospitals

Your letter of January 5, 1939, to this department in which you request an opinion of the following questions has been referred to the writer for attention. The questions submitted by you are:

"1. Can Matagorda County participate in the construction of a public charitable hospital where the title thereto is held by five or more trustees for the use and benefit of Matagorda County, such hospital to be operated in the nature of a public non-profit and charitable hospital?

"2. If your answer to the above question is affirmative, then can the County issue deficiency warrants to be retired out of the Permanent Improvement Fund of the County to the extent of Twenty Thousand Dollars (\$20,000.00), for such purpose?"

Article 4478 of the Revised Civil Statutes of 1925, is as follows:

"The Commissioners Court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions

of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

"1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

"2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

"3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

"4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection

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therewith; to do all other things that may be required by law in order to render said bonds valid.

"5. To appoint a board of managers for said hospital.

"6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift. (Acts 1913, P. 71)"

The above statute is the only statutory authority of a Commissioners' Court of a county to build hospitals for the care and treatment of persons suffering from illness and disease, except Article 4492, Revised Civil Statutes of 1925, under which Article you advise that your county cannot qualify.

Your attention is called to that portion of Article 4478 reading as follows:

"Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:"

After such words appears numerically the sixth paragraph, as is hereinbefore set out. The sixth paragraph is:

"To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift."

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The language of the Article clearly and unequivocally provides that the commissioners' court shall:

"Hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property of any donation to be applied...."

It has long been announced in Texas that commissioners courts are courts of limited jurisdiction without any powers except such as are expressly conferred. El Paso vs. Elam, 106 SW 2nd, 393; Howard vs. Henderson County, 116 SW 2nd 479; Hill County vs. Bryant and Huffman, 264 SW 520; Commissioners' Court vs. Wallace, 154 SW 2nd 535.

In the last case cited in support of this proposition Judge Pierson, speaking for the Supreme Court, approved and confirmed the holding of the Court of Civil Appeals on this proposition, reported in 281 SW 573. In the Court of Civil Appeals case, Judge Barcus of the Waco Court said:

"The Commissioners' Court is a creature of the state Constitution and its powers are limited and controlled by the Constitution and the laws as passed by the Legislature."

The failure of the Constitution to prohibit counties from issuing bonds for construction and maintenance of hospital left open to the Legislature the power to establish such hospitals. The Legislature has exercised this power by the enactment of the hereinbefore quoted Article 4478. The Commissioners' Court, having no power except that specially conferred by the Constitution and statutes passed pursuant thereto, would have no power to enter into any contract for the building and maintenance of a hospital, the title to which would be held in any manner contrary to the principal provisions of Article 4478.

You are respectfully advised that in the opinion of this department, the first question propounded

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by you and hereinbefore set out must be answered in the negative. Having so answered the first question, it is unnecessary to dispose of the second question.

Trusting that the foregoing answers your inquiry, I am

Yours respectfully

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*  
Assistant

LA:AW

APPROVED:

*George B. Mann* *myh*  
ATTORNEY GENERAL OF TEXAS